

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

MICHAEL L. GRIMMETT,

Plaintiff,

v.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

CIVIL ACTION NO. 5:06-0883

PROPOSED FINDINGS AND RECOMMENDATION

The Defendant, Michael J. Astrue, Commissioner of the Social Security Administration, by counsel, Stephen M. Horn, Assistant United States Attorney for the Southern District of West Virginia, has moved the Court to remand this case to the Commissioner pursuant to the provisions of sentence four of 42 U.S.C. § 405(g) “for further administrative development.” (Doc. No. 14 at ¶ 2.) The Defendant asserts that the areas requiring further development include:

- (a) re-evaluating the medical source opinion evidence regarding Plaintiff’s mental status;
- (b) providing a rationale for the weight given to the opinions of Dr. Hassan, Mr. Morello, and Mr. Thompson;
- (c) evaluating all of Plaintiff’s impairments, including reflex sympathetic dystrophy.

(Id.) The Defendant further asserts that Plaintiff’s counsel has been contacted and does not oppose this Motion. (Id. at ¶ 3.)

Sentence four of 42 U.S.C. § 405(g) provides that “[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a

rehearing.” The transcript has been filed in this case (Doc. No. 9.), and the Plaintiff has filed a Motion for Summary Judgment and Brief in Support. (Doc. Nos. 10 and 11.) Having the Plaintiff’s Motion for Summary Judgment, the Defendant filed his Motion to Remand rather than a Motion for Judgment on the Pleadings. Apparently in view of the Plaintiff’s allegations, the Defendant requests a remand for further action and analysis consistent with the applicable law and Regulations. The Commissioner is required to include an explanation of what evidence, or inferences drawn therefrom, were relied on in arriving at a decision. See Cook v. Heckler, 783 F.2d 1168, 1172 (4th Cir. 1986). The undersigned therefore finds the reasons stated by the Defendant for seeking a remand appropriate.

Accordingly, there being good cause for the Defendant’s Motion to Remand and there being no objection, it is hereby respectfully **RECOMMENDED** that the District Court confirm and accept the foregoing findings, **GRANT** the Defendant’s Motion for Remand (Doc. No. 14.), **REVERSE** or **VACATE** the decision of the Commissioner, and **REMAND** Plaintiff’s case to the Commissioner pursuant to the fourth Sentence of 42 U.S.C. § 405(g) for further proceedings as Defendant envisions them in his Motion to Remand.

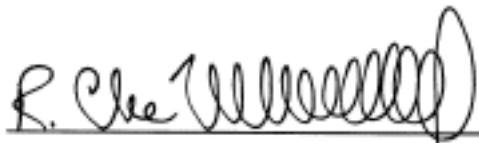
The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Thomas E. Johnston, United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(e) and 72(b), Federal Rules of Civil Procedure, the parties shall have three days (mailing/service) and then ten days (filing of objections) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such

objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on opposing parties, Judge Johnston, and this Magistrate Judge.

The Clerk is directed to file this Proposed Findings and Recommendation and to send a copy of the same to counsel of record.

DATE: February 21, 2007.



R. Clarke VanDervort
United States Magistrate Judge